

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON

STEVEN LEE KLINE,

Petitioner,

Case No. 3:23-cv-5

vs.

WARDEN, CHILLICOTHE  
CORRECTIONAL INSTITUTION,

District Judge Michael J. Newman  
Magistrate Judge Karen L. Litkovitz

Respondent.

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**ORDER: (1) ADOPTING THE REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE (DOC. NO. 8); (2) GRANTING RESPONDENT’S MOTION TO DISMISS (DOC. NO. 6); (3) DISMISSING PETITIONER’S PETITION FOR A WRIT OF HABEAS CORPUS (DOC. NO. 1) WITH PREJUDICE; (4) DENYING A CERTIFICATE OF APPEALABILITY; (4) CERTIFYING THAT ANY APPEAL WOULD BE OBJECTIVELY FRIVOLOUS AND FINDING THAT *IN FORMA PAUPERIS* STATUS SHOULD BE DENIED ON APPEAL; AND (5) TERMINATING THIS CASE ON THE DOCKET**

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This case is before the Court on Respondent’s motion to dismiss (Doc. No. 6) and the Report and Recommendation of United States Magistrate Judge Karen L. Litkovitz (Doc. No. 8), to whom this case was referred pursuant to 28 U.S.C. § 636(b). On December 4, 2023, Magistrate Judge Litkovitz recommended the Court grant Respondent’s motion to dismiss and deny Petitioner’s application for a writ of habeas corpus. *See* Doc. No.8. Petitioner timely filed an objection to the Report and Recommendation on December 15, 2023. *See* Doc. No. 9. As required by 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b), the Court has reviewed the comprehensive findings of the Magistrate Judge and considered *de novo* all findings in this matter, including Petitioner’s objections.

Upon careful *de novo* consideration of the foregoing, the Court determines that the Report and Recommendation (Doc. No. 8) should be adopted. The Court agrees with Magistrate Judge Litkovitz's conclusion that Petitioner's application for a writ of habeas corpus is time-barred pursuant to 28 U.S.C. § 2244(d)(1), as amended by § 101 of the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), Pub. L. No. 104-132, 110 Stat. 1214. Doc. No. 8 at PageID 281. Further, the Court agrees with Magistrate Judge Litkovitz's conclusion that: (1) all the tolling provisions set forth in 28 U.S.C. §§ 2244(d)(1)(B) through (D) are inapplicable to Petitioner's ground for relief; and (2) Petitioner is not entitled to equitable tolling under AEDPA. *See id.* at PageID 282-86. Under 28 U.S.C. § 2244(d)(1)(A), the statute of limitations applicable to Petitioner's case expired on May 16, 2012, more than ten years before the instant habeas corpus petition was filed. *Id.* at PageID 286.

Petitioner's objection reasserts his position that the statute of limitations is inapplicable because the state trial court lacked subject matter jurisdiction, which can be raised at any point in a case. Doc. No. 10. This objection, however, does not change the Court's analysis or conclusion. *See* Doc. No. 9 at PageID 282, n.2 (finding that "this Court and other federal courts 'considering whether subject matter jurisdiction claims provide an exemption from the AEDPA's statute of limitations have uniformly rejected such claims[]'" (citing *Meadows v. Warden*, No. 1:10-cv-640, 2011 WL 4442644, at \*4-5 (S.D. Ohio May 4, 2011) (collecting cases) (Report and Recommendation), *adopted*, 2011 WL 4434877 (S.D. Ohio Sept. 22, 2011))). *See also id.* (citing *Voyles v. Crow*, No. CIV-22-71-F, 2022 WL 949979, at \*1 (W.D. Okla. Mar. 29, 2022) ("there is no exception to 2244(d)(1)'s one-year statute of limitations for a habeas claim based on a trial court's alleged lack of subject matter jurisdiction)).

Accordingly, the Court hereby **ORDERS** that: (1) the Report and Recommendation is **ADOPTED** in full (Doc. No. 19); (2) Petitioner's petition (Doc. No. 1) is **DISMISSED WITH PREJUDICE**; (3) Petitioner is **DENIED** a certificate of appealability; (4) any appeal is **CERTIFIED** as objectively frivolous and Petitioner should be denied *in forma pauperis* status on appeal; and (5) this case is **TERMINATED** on the Court's docket.

**IT IS SO ORDERED.**

Date: January 18, 2024

s/ Michael J. Newman  
Hon. Michael J. Newman  
United States District Judge